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Letter dated 10 September 2012 from the Chargé d'affaires a.i. of the Permanent Mission of South Sudan to the United Nations addressed to the President of the Security Council

Please find attached a copy of a letter addressed to the Chairperson of the African Union High-level Implementation Panel with regard to the disputed and claimed areas by the two negotiating States.

Kindly accept this submission as documentation for circulation to all members of the Security Council.

(*Signed*) Francis **Nazario**
Deputy Permanent Representative
Chargé d'affaires a.i.

12-50264 (E) 140912

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Annex to the letter dated 10 September 2012 from the Chargé d'affaires a.i. of the Permanent Mission of South Sudan to the United Nations addressed to the President of the Security Council

Disputed and claimed areas

I write at this time with reference to the above-mentioned subject matter to express my Government's genuine growing concern over the following:

(1) The absence of any discussion in the negotiations around a serious and practical mechanism to resolve the status of the claimed areas along the border; and

(2) Recent statements from both the African Union High-level Implementation Panel and the Government of the Sudan that the Republic of South Sudan agreed to exclude the treatment of the claimed areas within the African Union border experts' panel process whose terms of reference are currently being developed.

It is noteworthy that both States, and the African Union High-level Implementation Panel as the facilitator of these bilateral negotiations, have been mandated by the African Union Peace and Security Council and the United Nations Security Council to negotiate the "resolution of the status of the disputed and claimed border areas" (Peace and Security Council communiqué of 24 April 2012, para. 13 (iii); Security Council resolution 2046 (2012) of 2 May 2012, para. 2 (iii)). The African Union Peace and Security Council and the United Nations Security Council mandate has not called for any prioritization or disparate treatment between these two categories of contested areas. To date, in serious violation of this mandate, the Sudan has consistently refused to negotiate any peaceful settlement mechanisms to address the claimed areas.

To date, the African Union High-level Implementation Panel has presented the parties with several documents related to the borders. As you are aware, however, in none of those documents has the Panel featured a serious process for the claimed areas. The documents primarily focused their attention on the settlement of the disputed areas and then relegated the resolution of the claimed areas to little more than an exchange of information between the parties and another series of negotiations rounds to define the very settlement process the parties were mandated to do by 2 August, and now 22 September 2012. Nothing is time-bound, and nothing is offered to ensure that a decision is actually taken. On each occasion that we have received such documents from the Panel, the Republic of South Sudan delegation has raised these concerns with you and your team.

This is not acceptable if we are to comply with the African Union Peace and Security Council and United Nations Security Council mandate and bring peace and security to the border region where claimed areas will remain unaddressed and substantially militarized (even after the implementation of the safe demilitarized border zone should the Government of the Sudan finally accept the security map mandated by the African Union Peace and Security Council and the United Nations Security Council.

Furthermore, this failure to address the claimed areas has been accentuated by the African Union High-level Implementation Panel's recent presentation of the terms of reference for the agreed upon African Union border experts' panel process.

From the beginning when the African Union High-level Implementation Panel raised the issue of new border expert-facilitated negotiations — which then emerged into the more defined panel process — the Republic of South Sudan has consistently stated that any such mechanism would need to address the claimed areas as well. While the disputed areas could possibly be given a priority, in the absence of any other parallel and comparable mechanism for the claimed areas, they too would need to be included in the panel process.

This position, for instance, was cleared conveyed in the Republic of South Sudan delegation's comments and markup of 23 June 2012 to the African Union High-level Implementation Panel's proposal on "Agreement between the Republic of the Sudan and the Republic of South Sudan on the Resolution of the Status of the Disputed Areas and Related Matters". In the comments and markup, the Republic of South Sudan had to insert all the missing references to the claimed areas. Furthermore, on 4 August, at the close of the last round of the negotiations, the Republic of South Sudan border negotiation team — including its chief negotiator — met with the African Union High-level Implementation Panel and its three chosen members for the panel process. At the close of that meeting, the Republic of South Sudan's chief negotiator made it clear that the Republic of South Sudan delegation would need to approve the terms of reference for the panel process and that, while the Republic of South Sudan agreed to the application of this mechanism to the disputed areas, the terms of reference would also have to reflect that the panel process would also apply to the claimed areas.

Nevertheless, when the African Union High-level Implementation Panel forwarded its first draft terms of reference for the panel process to the parties (dated 8 August 2012), there was no mention of the claimed areas and no explanation for this omission. It was for this reason that the head of the Republic of South Sudan border negotiation team, Michael Makuei — after discussing the matter with the Republic of South Sudan chief negotiator — wrote to you on 15 August 2012. His letter specified my Government's disappointment with the terms of reference, stating that: "The experts, as agreed, were supposed to prepare a non-binding opinion on the status of the disputed and claimed areas, not only the five disputed areas". The Minister further remarked that the "terms of reference completely abandon the claimed areas" and requested amendment of the terms of reference accordingly. Indeed, given the history of oral and written exchanges on this issue (some of which are detailed in this letter), your subsequent response of 17 August 2012, stating that, in the negotiations around the panel process, "There was no discussion, in that context, that their mandate should include the claimed areas" was puzzling, as have been remarks from the African Union High-level Implementation Panel during this last round of negotiations that the Republic of South Sudan agreed to exclude the claimed areas from the African Union border experts' panel process.

In light of the above, recent statements by the African Union High-level Implementation Panel and the Sudan that the Republic of South Sudan delegation agreed to exclude the claimed areas from the African Union border experts' panel process (without any offering to date of a comparable mechanism for the claimed areas) and that the Republic of South Sudan delegation's raising of the matter now is creating obstacles to the settlement of the disputed areas is wholly incorrect and unacceptable. Such statements are unhelpful in these negotiations and cannot be a basis for moving us closer to compliance with the African Union Peace and Security Council and United Nations Security Council mandate, nor used as a pretext for

minimizing the fact that the Government of the Sudan still refuses to acknowledge, let alone agree upon, the negotiation of a mechanism to peacefully resolve the final status of the claimed areas.

As a neutral facilitator, given a specific mandate by the African Union Peace and Security Council and the United Nations Security Council, the African Union High-level Implementation Panel should not be perceived as facilitating the Sudan's non-compliance by failing to also facilitate a serious and practical solution to finally resolve the claimed areas. The African Union Peace and Security Council and the United Nations Security Council require that the African Union High-level Implementation Panel must treat the claimed areas with the same seriousness as that accorded to the disputed areas. This is all that the Republic of South Sudan delegation has been repeatedly requesting from the Panel.

Rest assured that the Government of South Sudan maintains its agreement to submit the settlement of the disputed areas to the African Union border experts' panel process as a first step in reaching a final resolution of the areas within a defined period and before resorting thereafter to arbitration (if still necessary). This agreement, however, has never been offered at the expense of excluding the claimed areas from this same process if no comparable mechanism is agreed upon for them. The Republic of South Sudan now looks forward to receiving either revised terms of reference for the panel process which include the claimed areas, or a new proposal containing a serious, developed and time-bound process to peacefully settle the claimed areas. An agreement on the settlement of the claimed areas must accompany the agreement on the settlement of the disputed areas, whether they are both finally sent to the African Union border experts' panel process or are given equal treatment through two different but equally suitable processes.

Threats to peace and stability along the shared border between the Republic of South Sudan and the Sudan will only be secured if all the contested areas are addressed. For this reason, the Republic of South Sudan delegation stands ready to continue to contribute in good faith to assisting the African Union High-level Implementation Panel in securing resolution of the final status of the disputed and claimed areas as mandated, and prior to the 22 September 2012 deadline advanced by the African Union Peace and Security Council.

(*Signed*) Deng Alor **Kuol**
Minister of Cabinet Affairs and Acting Chief Negotiator
Republic of South Sudan